

91-320

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of  
Airport and Airline Taxi-Cab Company,  
FACT  
d/b/a Ace Delivery and Courier, for  
AND  
Courier Service Carrier Permit  
Authority.

FINDINGS OF  
CONCLUSIONS  
RECOMENDATION

The above-entitled matter came on for hearing before  
Administrative Law  
Judge Richard C. Luis on June 18, 1992 at the Office of  
Administrative  
Hearings in Minneapolis. The record in this matter closed on July 9,  
1992.

Gregory Pennella, Esq., Offices of S. Mark VaughT kite  
700, Ox West  
Fifth Street, St. Paul, Minnesota 55102 appeared on behalf of  
the Petitioner,  
Ace Delivery and Courier ("Ace"). Samuel Rubensteirn ICC  
Practitioner, P. O.  
Box 5, Minneapolis, Minnesota 55440 appeared on behalf of  
Protestants Action  
Messenger, Inc.; Mallard Delivery Service, Inc.; MATS, Inc.;  
Midwest Delivery  
Service, Inc.; Rapid 'derv, Inc.; Road Runner Transportation,  
Inc.; and Twin  
Lakes Messenger Service, Inc.

Notice is hereby given that, pursuant to Minn. Stat.  
14.61, and the  
Rules of Practice of the Public Utilities Commission, as  
applicable to the  
Transportation Regulation Board, and the Rules of the Office of  
Administrative  
Hearings, exceptions to this Report, if any, by any party  
adversely affected  
must be filed within 20 days of the mailing date  
howreof with the  
Transportation Regulation Board, Minnesota Administrative Truck  
Center, 254  
Livestock Exchange Building, 100 Stockyards Road, South St.  
Paul, Minnesota  
55075. Exceptions must be specific and stated and  
numbered separately.

Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's Recommendation and that said Recommendation has no legal effect unless expressly adopted by the Board as its final Order.

#### STATEMENT OF ISSUE

Whether the Petitioner should be granted Courier Services Carrier Permit Authority for statewide expedited delivery of packages and articles, except household goods.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. In August 1991 Ace petitioned the Transportation Regulation Board for courier authority to transport packages and articles between points in Minnesota. Protests were filed by the several clients represented by Mr. Rubenstein and by Spee-Dee Delivery Services, Inc.

2. Prior to the hearing, Ace amended its Petition to read:

"Petition for courier services carrier permit for the transportation of packages and articles except household goods between all points in Minnesota;

Restricted to expedited delivery as defined in Minn. Stat. 221.011, subd. 25 (1);

Restricted against overnight small package delivery as defined in Minn. Stat. 221.011, subd. 25 (2)."

As a result of the amendment, Spee-Dee Delivery withdrew its Protest.

3. Before the hearing convened, Ace and the remaining Protestants stipulated: (1) that the Protestants would not contest the fitness and ability of Ace to conduct the proposed operations; and (2) that the Protestants would not contest that Ace's vehicles proposed for courier services operations meet applicable safety standards.

4. Ace Delivery and Courier is the business name of that portion of Airport and Airline Taxi-Cab Company involved in the package delivery business. Ace has Local Cartage Carrier (LCC) authority, but does not have Courier Services Carrier (CSC) authority.

5. A carrier with LCC authority can deliver only within contiguous

municipalities emanating from and including Minneapolis and St. Paul. As a result, the service territory (Local Cartage Zone) covers most of the population centers in the Seven-County Metropolitan Area, but not all. It also stretches beyond the seven counties to such population centers as Delano in Wright County and Elk River in Sherburne County. Among the population centers in the Seven-County Metropolitan Area not included are Forest Lake and Stillwater in Washington County and Farmington, Lakeville and Hastings in Dakota County.

6. Ace receives approximately three to five calls per week to transport packages and articles to or from areas outside the Local Cartage Zone. Because it lacks statewide CSC authority, Ace has to turn down such business. Many of the calls are for delivery of blood, oxygen, eyeballs, organs and other body parts to and from medical services vendors such as the University of Minnesota and the U.S. Veterans Hospital in Minneapolis. Such calls are for instantaneous service and can come anytime, day or night. In addition to the communities listed in the preceding Finding, Ace receives calls for service to or from such Greater Minnesota communities as Northfield, Owatonna, St. Cloud and communities in western Minnesota.

7. In its years of operation under the leadership of its President, Robert I. Zimmerman, Airport and Airline Taxicab Company has grown to a 130-vehicle operation employing 25 persons at its base and approximately 145 vehicle operators. If the Petition is granted, Ace intends that 124 vehicles will be authorized for courier operations. The record contains a "sting" of the vehicles, plus testimony by Ace's Safety Director/Operations Supervisor (Tim Swiler) regarding a regular safety inspection schedule, but contains no vehicle safety inspection reports. Ace maintains its vehicles once a month and inspects them once a year for compliance with safety standards. In addition, the cars (most of its vehicles also operate as taxicabs) are inspected for safety compliance twice a year by the municipalities (Minneapolis, St. Paul, Bloomington, St. Louis Park) where they are licensed as taxis.

8. Ace operates 24 hours per day, seven days a week. It offers "instantaneous", 1-hour and 3-hour service for package delivery, at varying rates. It stands ready and willing to provide expedited package delivery service on a statewide basis, but finds itself limited to the Local Cartage Zone due to lack of any more territorial authority.

9. Both Ace and its parent, Airport and Airline Taxi, are in sound financial positions. For calendar year 1990 (the last period shown in the record), Ace made a small profit and the parent corporation suffered a slight loss. Both entities have relatively large reserves of retained earnings.

10. Ace maintains it can offer services not available from the Protestants because of its large number of vehicles available 24 hours per day, its large customer list (over 1,000 clients), the ability to communicate with all vehicles in operation by radio and all other operators through pagers, and its experience in delivering items requiring special handling.

11. The Petitioner produced no witnesses other than Mr. Zimmerman and Mr. Swiler, Company employees. The record contains no shipper testimony and no corroborating evidence (only employee testimony forms the basis for Finding 6) was offered to establish a need for the Petitioner's services outside the Local Cartage Zone.

12. Executives from Protestants Midwest Delivery Service (Phillip Frederickson), Road Runner Transportation (Larry Huiras), Mallard Delivery Service (Michael Keefe), Action Messenger (Joseph Bakeman) and MATS (Don Kloster) established that their companies all possess statewide CSC authority and that each had sufficient numbers of drivers and equipment available to serve the three to five service requests per week turned down by Ace because of its territorial restriction to the Local Cartage Zone. All but MATS

operate 24 hours per day (MATS will operate between 2:00 a.m. and 6:00 a.m.

but arrangements have to be made during the remaining 20 hours of the day) and

have communication systems adequate to provide expedited service anytime.

They serve collectively such Greater Minnesota centers as Rochester, Duluth,

St. Cloud and Mankato on a regular basis, and Road Runner and MATS both have

experience in deliveries for medical vendors (the only service type specified

by Ace as potential business outside the Local Cartage Zone).

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge and Transportation Regulation Board have jurisdiction over the subject matter of the hearing pursuant to Minn. Stat. 14.50 and 221.121.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. From the Petitioner's experience, knowledge of the regulations and financial condition, the Judge concludes that it is fit and able within the meaning of Minn. Rule 7800.0100, Subp. 4.

4. The Petitioner's vehicles are maintained regularly. The record contains no competent evidence to establish whether they are free from defects or within the safety requirements prescribed by the Department of Transportation.

5. A need exists for expedited courier services in Greater Minnesota, but the Protestants have established that existing permit and certificated carriers offer sufficient courier services to meet fully and adequately all needs of Greater Minnesota established by the Petitioner.

6. Any Findings of Fact more properly considered Conclusions of Law are

hereby adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED  
HEREIN. THE  
TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY  
WHICH MAY  
ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATION.

It is the RECOMMENDATION of the Administrative Law Judge to  
the Board  
that it issue the following:

ORDER

IT IS HEREBY ORDERED: that the Petition of Air-port and Airline  
Taxi-Cab



Company, d/b/a Ace Delivery and Courier , for statewide expedited Courier Services Carrier Permit authority be DENIED.

Dated: July 23, 1992.

RICHARD C. LUIS  
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped

MEMORANDUM

Counsel for the Petitioner offered four letters from shipper-customers of Ace Delivery in support of the Petition, which documents were not admitted to the record. They are transmitted to the Board under seal along with the record of the case so that the Board can access them if its review overrules the Judge's decision to deny admission. Admission was denied because the documents have no probative value regarding a need for the Petitioner's services outside the Local Cartage Zone. In addition, the authors of the statements were, not available for cross-examination, in violation of Minn. Rule 7830.3000, subp. 5.

After the Petitioner rested its case-in-chief, Practitioner Rubenstein moved for dismissal, which Motion was denied. He argued the Petitioner had shown no need for the proposed service because no shipper witnesses appeared. The Administrative Law Judge does not agree. The Practitioner's Motion is analogous to one for a directed verdict in a civil court trial. In deciding such a motion, the judge must view the record in a light most favorable to the party against whom the action is directed. 88 C.J.S. 257 a. The issue is

whether the Petitioner presented competent evidence which, standing alone, establishes Et need for expedited courier service outside the Local Cartage Zone. Testimony from the Petitioner's President and Safety Director/Operations Manager established that Ace turns down three to five requests for such service each week. The Administrative Law Judge found that oral testimony to be credible and sufficient, without corroborating evidence from potential shipper-customers, to survive the Protestants' Motion.

Under Minn. Stat. 221.21, the burden then shifted to the Protestants to demonstrate that existing certificated carriers offer transportation services sufficient to meet fully and adequately the needs the Petitioner seeks to serve. As noted in Finding 12, the Protestants met that burden.

It is Concluded that the Petitioner did not establish that its vehicles meet the safety standards of the Department of Transportation. The fact that the Protestants did not contest that issue does not, in itself, establish that the standards are met. The Administrative Law Judge left the record open through July 6 (mailing date) to allow the Petitioner to submit the most recent inspection reports on the vehicles proposed for courier service. A listing of the vehicles and a blank inspection form were filed. This submission, along with Safety Director's testimony that the vehicles meet the safety standards, are insufficient to establish compliance with the statutory requirement because there is no evidence that the Director inspected the vehicles himself and no corroborating oral or documentary evidence on the condition of the specific vehicles.

RCL